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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,989	04/19/2004	Dietmar Przytulla	PRZYTULLA-23/13	3478
20151	7590	07/19/2005	EXAMINER	
HENRY M FEIEREISEN, LLC 350 FIFTH AVENUE SUITE 4714 NEW YORK, NY 10118			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tala

Office Action Summary

Application No.

10/826,989

Applicant(s)

PRZYTULLA, DIETMAR

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/19/04</u> . | 6) <input type="checkbox"/> Other: ____. |

Drawings

1. The drawings are objected to because change the sectional views C-C and D in Figure 7 should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view (MPEP 608.02(h)(3)). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-11, 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases “is spaced form a longer wall ...” and “cross scetion”[sic] in claims 10-11 are incomplete and indefinite. In claim 22, the phrase “are flattened in parallel direction and and [sic] perpendicular direction with respect to a vertical direction” is incomplete and indefinite and it is not clear how it is parallel direction and perpendicular direction with respect to a vertical direction?

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schutz (4,947,988; hereinafter Schutz'988). To the extent that the Examiner can determine the scope of the claims, Schutz'988 discloses a pallet container comprising a bottom pallet (7), an inner synthetic resin container/thin-walled thermoplastic inner receptacle (2) and a cage jacket (3) surrounding the receptacle and securely connected with the bottom pallet. The cage jacket including horizontal hollow bars (5) having 90 degree curved corner regions (49) flattened in parallel direction (Figure 11 and column 4, lines 34-42). The flattened in the curved corner regions from at least one of inside and outside by at least one forth of a height of a cross section profile of the horizontal bars (see Figure 11). Schutz'988 also discloses the other limitations of the claims except for the inner receptacle being a thin walled rigid thermoplastic inner receptacle. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Schutz'988 to modify the inner receptacle so it comprises thin walled rigid thermoplastic inner receptacle for better protecting the contents.

6. Claims 1-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 22 above, and further in view of The German Patent No. 297 19 830 (hereinafter DE'830) and Schaefer (5,848,502). Schutz'988 discloses the pallet container as above having all the limitations of the claims except for the hollow bars comprise a closed profile of trapezoid-shaped cross section having a longer wall and a shorter wall in parallel relationship and two straight walls extending obliquely relative to each other toward one another from the longer wall toward the shorter wall at an angle between 20 degree and 45 degree.

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DE'830 shows a pallet container (1) comprising a bottom pallet (2), an inner receptacle (4) and a cage jacket (3) surrounding the receptacle and securely connected with the bottom pallet. The cage jacket including hollow bars (6, 7) having various closed profile of trapezoid-shaped cross sections with a longer wall and a shorter wall in parallel relationship and two curve wall extending toward one another from the longer wall to the shorter wall. DE'830 further discloses the hollow bar having dimpled inwardly to define two outer longitudinal edges and each edge is formed with an outwardly projecting bulge (Figures 1-5). Schaefer teaches a post support system comprising a hollow bar (32) having a closed profile of trapezoid-shaped cross section including a longer wall and a shorter wall in parallel relationship and two straight walls extending obliquely relative to each other toward one another from the longer wall toward the shorter wall at an angle between 20 degree and 45 degree (Figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of DE'830 and Schaefer to modify the hollow bars of Schutz'988 so each of the hollow bars comprises a closed profile of trapezoid-shaped cross section having a longer wall and a shorter wall in parallel relationship and two straight walls extending obliquely relative to each other toward one another from the longer wall toward the shorter wall at an angle between 20 degree and 45 degree to provide a strong cage jacket for better protecting the inner receptacle. As to claim 2, Schaefer shows the angle is about 26 degree which is considered equivalent to about 36 degree as claimed.

7. Claims 14, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Schutz (5,678,688; hereinafter

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Schutz'688). Schutz'988 as modified further fails to show each of the longer wall and the shorter wall of the hollow bars comprise two dimples in precise opposite disposition next to a point of intersection. DE'830 further shows in the embodiment of Figure 5 that two dimples in opposite directions of the hollow bars. Schutz'688 suggests a pallet container (1) comprising a bottom pallet (11), an inner synthetic resin container/thin-walled thermoplastic inner receptacle (2) and a cage jacket (8-10) surrounding the receptacle and securely connected with the bottom pallet. . The cage jacket including horizontal and vertical hollow bars with hollow bar having two dimples (25, 26) in precise opposite disposition with one dimple positioned on one side next to a point of intersection and the other dimple positioned on the other side next to the point of intersection (Figures 6-7) and the hollow bars having dimples (25 and 17) of varying depths (Figure 2). It would have been obvious to one having ordinary skill in the art in view of DE'830 and Schutz'688 to modify the hollow bars of Schutz'988 as modified so the hollow bars comprise two dimples in precise opposite disposition with one dimple positioned on one side next to a point of intersection and the other dimple positioned on the other side next to the point of intersection to facilitate welding the hollow bars together at the point of intersection.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of a copending patent application number 10/827,828. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structural limitations in the claims of the instant patent application are fully disclosed by the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.



Luan K. Bui
Primary Examiner

lkb
July 17, 2005